IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.822 of 2006

Date of decision 13.10.2006

Lekh Raj Rana Petitioner

Vs.

State of H.P. and another Respondents

Coram:

The Hon'ble Mr.Justice V.K.Gupta, Chief Justice

The Hon'ble Mr.Justice Deepak Gupta, Judge

Whether approved for reporting?[1]

For the Petitioner: Mr. Sandeep Kaushik,Advocate.

For the Respondents : Mr.M.S.Chandel, Advocate General,
with Mr.J.K.Verma, Dy.A.G., for the respondents.

V.K.Gupta, C.J.(Oral)

With the consent of the learned counsel for the parties this petition is taken up today for final disposal, without formally admitting it to hearing.

In O.A.No.393 of 2004 an order was passed by the learned H.P. Administrative Tribunal on 1.3.2004, directing that the said O.A. filed by the petitioner be treated as a representation by the Secretary, Technical Education, Govt. of Himachal Pradesh, who should decide the same within a period of four weeks. Consequently, an order came to be passed on 16.4.2004 by the Principal Secretary (Technical Education), Govt. of Himachal Pradesh in favour of the petitioner by which the adhoc service rendered by the petitioner was counted for the purposes of determining the seniority. Based on this order a tentative seniority list was circulated vide Office Memorandum dated 27.7.2004. In this tentative seniority list the petitioner's name figured at Serial No.2. Objections were invited from all concerned. Accordingly, a final Seniority List was issued vide Office

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[1] Whether reporter of local papers are allowed to see the judgment ?

Memorandum dated 7.9.2005. In the final seniority list also the petitioner's name figured at Serial No.2.

On 26.4.2006 Order No.EDN(TE)E(1)3/2004 was issued by the Principal Secretary (Technical Education), Govt. of Himachal Pradesh, which reads thus:

> "Whereas consequent to Hon'ble H.P.AT directions, OA No.393 of 2004 titled Sh.Chander Shekhar and Sh.L.R.Rana vs. State of H.P. and others was treated as representation and Shri L.R.Rana (applicant No.2) was allowed the benefit of the adhoc service rendered by him against the post of Lecturer, Mechanical Engineering vide order of even number dated 16.4.2004 and the seniority list was recast to provide him seniority accordingly;
>
> And whereas adhoc service cannot be taken into consideration for any purpose except for consideration regarding promotion as provided in the applicable Department of Personnel instructions ;
>
> Now therefore in partial modification of above said orders dated 16.4.2004, it is hereby ordered that the seniority list of the cadre of Lecturers (Mech. Engineering) be recast after giving due notice to all concerned and further that the seniority list be recast strictly according to applicable instructions."

Strangely and very very curiously even though this order stated that adhoc service can be taken with respect to the promotion as per applicable instructions of the Department of Personnel, yet for totally unexplained reasons it directed that the seniority list finalized pursuant to the order passed on 16.4.2004 (supra) by the then Principal Secretary (Technical Education) should be recast. Based upon this, vide Office Memorandum No.EDN(TE)B(13)5/2000 dated 26.5.2006 final seniority list was issued by the Principal Secretary (Technical Education). Vide this Office Memorandum the revised final seniority list of Lecturers in the Mechanical Engineering Department issued vide Office Memorandum dated 7.9.2005 (supra) was withdrawn. This order has been impugned by the petitioner before the learned H.P. Administrative Tribunal in O.A.(D) No.329 of 2006.

After hearing Mr.Sandeep Kaushik, learned counsel appearing for the petitioner and Mr.M.S.Chandel, learned Advocate General appearing for the respondents we do feel at this stage that perhaps, first and foremost, the act of the State Government in issuing Order No.EDN(TE)E(1)3/2004 dated 26.4.2006 was not in accordance with the principles of natural justice and secondly once the State Government had itself taken a decision, pursuant to the order passed by the H.P. Administrative Tribunal on 1.3.2004 in O.A. No.393 of 2004 that the adhoc service rendered by the petitioner should be counted, there was no occasion for the State Government to take a contrary view in the absence of any stated reasons. This is more so when in the order dated 26.4.2006 the State Government itself had observed as under:

> "And whereas adhoc service cannot be taken into consideration for any purpose except for consideration regarding promotion as provided in the applicable Department of Personnel instructions."

After all the petitioner's only grievance was that the adhoc service rendered by him be counted towards his seniority for the purpose of his promotion to the next higher post. Despite this self confessed adoption of the aforesaid Principal the State Government passed the impugned order of withdrawing the revised seniority list issued on 7.9.2005. Apparently, this order of the State Government perhaps may not be sustainable in the final analysis.

In the light of the aforesaid observations, we do feel that a strong prima facie case was made out by the petitioner warranting the stay of any promotion to the post of Head of Department, Mechanical Engineering based on the changed situation as had been brought about by the issuance of the O. M. dated 26.5.2006 (supra). The Tribunal ought to have considered the aforesaid aspect but unfortunately it did not do so.

The petition is allowed.

It is ordered that until the Tribunal disposes of either the O.A. itself or prayer of the petitioner for grant of interim relief, status quo as existing on date with respect to the promotion to the post of Head of Department, Mechanical Engineering shall be maintained by the respondents.

CMP No.1309 of 2006

In view of the order passed in the main petition, this petition does not survive and stands disposed of accordingly.

(V.K. Gupta), C.J.

October 13,2006(g) **(Deepak Gupta), J.**